

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FERDINAND BENJAMIN, Individually
and as the Personal Representative of the
Estate of ENOCK BENJAMIN, Deceased**

Plaintiff,

v.

JBS S.A., et al.,

Defendants.

Civil Action No. 2:20-cv-02594-JP

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF PLAINTIFF'S MOTION TO REMAND**

Dated: November 12, 2020

s/Molly E. Flynn

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Pilgrim's Pride Corp., and JBS S.A.*

ARGUMENT

Defendants JBS USA Food Company, JBS USA Holdings, Inc.,¹ JBS Souderton, Inc., Pilgrim's Pride Corporation, and JBS S.A. (together, "Defendants") respectfully submit this response to Plaintiff's motion for leave to file a notice of supplemental authority.

Although Defendants do not oppose Plaintiff's request to submit additional authority for the Court's consideration, Defendants *do* question the relevance of that authority to the issues before the Court. In fact, it is difficult to see *any* issue on which *Wiles* could prove instructive.

Wiles resolved a motion to remand where the sole basis of federal jurisdiction asserted by the defendants was complete preemption under the PREP Act. Defendants here, by contrast, did not invoke—or, for that matter, even cite—the PREP Act in support of their removal of this case. Nor have they argued complete preemption of *any* of Plaintiff's claims, nor invoked such preemption as the basis of their removal. To the contrary, their claim to federal-question jurisdiction rests entirely on *Grable & Sons Metal Products, Inc. v Darue Engineering and Manufacturing*, 454 U.S. 308 (2005), and its progeny.²

What is more, *Grable*-based federal-question jurisdiction is not the only basis of federal subject-matter jurisdiction invoked in Defendants' removal. They also rely on the fact that, once the fraudulently joined JBS Souderton, Inc., is dismissed from this action, complete diversity will exist between the parties. Removal is therefore also appropriate under 28 U.S.C. §§ 1441 and 1332. Diversity jurisdiction was not raised in *Wiles*; as noted, the *only* basis for federal jurisdiction addressed in the opinion was complete preemption under the PREP Act.

¹ As previously briefed, JBS USA Holdings, Inc. has been defunct for 5 years, and took no action that would relate or give rise to Plaintiff's claims. Defs.' Am. Mot to Dismiss at 10–12, ECF No. 15.

² See Defs.' Not. of Removal at 13–18, ECF No. 1; Defs.' Opp'n to Pl.'s Mot. to Remand at 22–27, ECF No. 21.

Moreover, because *Wiles* arose in the context of a motion to remand, it has no bearing at all on the issues raised in Defendants' various motions to dismiss—including, in particular, the primary-jurisdiction doctrine discussed in Defendants' own motion for leave to submit a notice of supplemental authority. ECF No. 43 Ex. 1 (discussing *Palmer v. Amazon.com Inc.*, Civ. No. 1:20-cv-02468).

Given the above, it is difficult to see why Plaintiff proffers this decision at all—and why he does so *now*, when he received the opinion nearly a month ago, predating *Palmer* by two weeks. But be that as it may, Defendants ultimately have no objection to the Court's affording *Wiles* the weight it is due in light of its salience to this case. Which is to say, none at all.

Dated: November 12, 2020

Respectfully submitted,

s/Molly E. Flynn

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CERTIFICATE OF SERVICE

I, Molly E. Flynn, hereby certify that on November 12, 2020, I electronically filed the foregoing Defendants' Response to Plaintiff's Motion for Leave to File Notice of Supplemental Authority in Support of Motion to Remand with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel or parties of record electronically by CM/ECF.

s/Molly E. Flynn

Molly E. Flynn

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